



HOUSE BILL 1065: Digital Communications in Elections.

2017-2018 General Assembly

Committee:	House Elections and Ethics Law	Date:	June 12, 2018
Introduced by:	Reps. Harrison, Lewis, G. Martin, Hardister	Prepared by:	Kara McCraw
Analysis of:	PCS to First Edition		Staff Attorney
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OVERVIEW: *HB 1065 would define "digital communications" in campaign finance laws, require reporting of electioneering communications that use digital communications, and require sponsor disclosure of advertisements made through digital communications.*

The PCS for HB 1065 would make the following changes:

- *Revise the definition of digital communications to qualified digital communications for a fee on Web sites or online platforms meeting certain characteristics, including 100,000 or more unique hits in a majority of the months in the preceding year.*
- *Require electioneering communications made by qualified digital communications when those communications may be received by at least 5,000 individuals in a statewide race, or 750 individuals in all other races, and meet other criteria for electioneering communications.*
- *Remove modifications to the definition for "mass mailing" that would have included messages sent or received electronically.*
- *Remove requirements for media outlets to receive written authorization maintained as a public record for independent expenditures or electioneering communications.*
- *Remove modifications to exceptions to electioneering communications.*
- *Add an alternative means of providing disclosure statements in qualified digital communication advertisements.*
- *Add a conforming change to keep the threshold for disclosure statements for qualified digital communication advertisements the same as for print, radio, and television advertisements.*
- *Change the effective date of the bill from January 1, 2019, to September 1, 2018.*

CURRENT LAW: G.S. 163-1411 defines an electioneering communication as a broadcast, cable, or satellite communication, mass mailing, or telephone bank that includes all of the following characteristics:

1. Refers to a clearly identified candidate for elected office.
2. In an even-numbered general election in November, is aired or transmitted after September 7, and in all other elections, is aired or transmitted within 60 days of the time set for early voting.
3. May be received by the following:
 - For as a broadcast, cable, or satellite communication: 50,000 or more individuals in a statewide election or 7,500 or more individuals in any other election.
 - For a mass mailing or telephone bank: 20,000 or more households, cumulative, in a statewide election, or 2,500 households, cumulative, in any other election.

Some communications are specifically excluded as electioneering communications, such as news stories, commentaries, or editorials distributed through the facilities of certain broadcasting stations, expenditures

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or independent expenditures, certain candidate debates or forums, certain communications made while the General Assembly is in session related to advocacy for or against a specific piece of legislation, certain commercial transactions, certain public opinion polls, and communications made in certain print news media.

G.S. 163A-1424 requires every individual or person incurring an expense for the direct cost of producing or airing electioneering communications aggregating in excess of \$5,000 to report certain information to the appropriate board of elections, including identifying those incurring the expense, the amount of the expenses during the period of the statement, to whom the expense was incurred, the elections to which it pertains, if any, the names of candidates identified, if known, and the names and addresses of those donating an aggregate of more than \$1,000 during the reporting period.

G.S. 163A-1476 makes it unlawful to sponsor an advertisement in the print media, television, or radio that constitutes an expenditure, independent expenditure, electioneering communication, or contribution required to be disclosed under the campaign finance laws without including the following:

1. A legend or statement indicating the sponsor that paid for the advertisement.
2. If the advertisement in print media supports or oppose the nomination or election of a clearly identified candidate, whether the advertisement was authorized by the candidate.
3. If the advertisement in print media oppose the nomination or election of a clearly identified candidate, the candidate the advertisement is intended to benefit.

Dependent on the type of media, certain specific size requirements for the disclosure statements are required by law. Misrepresentation of the sponsorship or authorization of the advertisement is a Class 1 misdemeanor. The disclosure requirements do not apply to an individual making uncoordinated independent expenditures aggregating less than \$1000 in a political campaign, or to individuals incurring expenses with respect to a referendum.

BILL ANALYSIS: The PCS for HB 1065 would do the following:

- Define the term "qualified digital communication" as any communication placed or promoted for a fee on a Web site or online platform if that Web site or online platform meets all of the following characteristics:
 - Is a public facing Web site, Web application, or digital application, including a social network, advertising network, or search engine.
 - Sells political advertisements, including search engine marketing, display advertisements, video advertisements, native advertisements, and sponsorships.
 - Has 100,000 or more unique monthly United States visitors or users for a majority of the months during the immediately preceding 12 months.
- Require reporting of electioneering communications that are made through a qualified digital communication that meets the other requirements of an electioneering communication and may be received by 5,000 or more individuals in statewide elections or 750 or more individuals in other election.
- Requires a disclosure legend in advertisements made through qualified digital communications indicating the sponsor of the advertisement. The disclosure must meet the following requirements:
 - Be either in letters as large as the smallest text in the qualified digital communication or in a heading or similar section of text displayed above or within the qualified digital communication that is visually distinct.
 - Have a reasonable degree of color contrast between the background and disclosure statement.

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- If the medium does not allow the disclosure statement to be disseminated in that manner, the display of the name of the person who paid for the qualified digital communication and a means to obtain the remainder of the information with minimal effort and without viewing additional information.

EFFECTIVE DATE: The PCS for HB 1065 would become effective September 1, 2018, and would apply to elections conducted on or after that date.